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| 7590            | 08/29/2008    | Mark L. Watson<br>BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP<br>Seventh Floor<br>12400 Wilshire Boulevard<br>Los Angeles, CA 90025-1026 | EXAMINER<br>BROWN, CHRISTOPHER J |                  |
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* RICHARD L. MALISZEWSKI

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Appeal 2008-0873  
Application 09/821,271  
Technology Center 2100

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Decided: August 29, 2008

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Before JOSEPH L. DIXON, ST. JOHN COURTENAY III, and  
CAROLYN D. THOMAS, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-24. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

## THE INVENTION

The disclosed invention relates generally to a computer system. More particularly, Appellant's invention relates to digital content protection in a computer system. (Spec. [0002]).

Independent claim 1 is illustrative:

1. A computer system comprising:
  - a compressor/decompressor (codec);
    - a system module having one or more functions called by the codec to render compressed content; and
      - an integrity agent to enforce conditions of use for the received content by examining a first voucher describing the integrity of the codec and a second voucher describing the integrity of the one or more functions that are to be accessed by the codec.

## THE REFERENCES

The Examiner relies upon the following references as evidence in support of the § 103 rejections:

|              |                    |  |
|--------------|--------------------|--|
| Angelo       | 5,944,821          | Aug. 31, 1999<br>(filed Jul. 11, 1996) |
| Reid         | 5,844,575          | Dec. 1, 1998<br>(filed Jun 27, 1996)   |
| Boccon-Gibod | US 2001/0016836 A1 | Aug. 23, 2001<br>(filed Nov. 2, 1998)  |

#### THE REJECTIONS

1. Claims 1, 2, and 4-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Boccon-Gibod in view of Angelo.
2. Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Boccon-Gibod in view of Angelo and Reid.<sup>1</sup>

#### PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, “[w]hat matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007). To be nonobvious, an improvement must be “more than the predictable use of prior art elements according to their established functions.” *Id.* at 1740.

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner’s position. See *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). Therefore, we look to Appellant’s Brief to show error in the proffered *prima facie* case.

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<sup>1</sup> We note that the Advisory Action dated 6/2/06 did not state whether the rejections under 35 U.S.C. § 112, first paragraph and § 112, second paragraph, as previously set forth in the Final Office Action, had been withdrawn. However, page 6 of Appellant’s Brief and page 2 of the Examiner’s Answer indicate agreement that these rejections are not before us on appeal.

We note that arguments which Appellant could have made but chose not to make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2006). *See also In re Watts*, 354 F.3d 1362, 1368 (Fed. Cir. 2004).

#### FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

##### *Specification*

1. Appellant does not give a definition of the claimed “integrity agent.” However, the integrity agent is used to determine the integrity and authenticity of a received content, decrypts content based on received vouchers, and enforces the conditions of use for the received electronic content. (Spec. p. 11, para. [0033].)
2. Appellant discloses that the claimed “modules” may be implemented by hardware as components coupled to an I/O bus or a combination of both hardware and software. (Spec. p. 10-11, [0032].)

##### *Angelo*

3. Angelo is directed to providing secure registration and integrity assessment of software in a computer-system. (Abst.)
4. Angelo teaches a secure hash table (or other type of integrity assessment code) that contains a list of secure hash values for

each program that the user wants to validate prior to execution.  
(col. 4, ll. 31-33, and Abst. ll. 10-11.)

5. Angelo teaches that a secure hash value is generated for a piece of software when the software is installed on the computer system. (col. 4, ll. 45-48.)
6. Angelo defines a secure hash value as a “mathematical representation” of the file. (col. 4 ll. 50-53.)

Obviousness under 35 U.S.C. § 103

Claims 1, 2, and 4-24

We consider first the Examiner’s rejection of claims 1, 2, and 4-24 under 35 U.S.C. § 103(a) as being unpatentable over Boccon-Gibod in view of Angelo. Since Appellant’s arguments have treated these claims as a single group which stand or fall together, we select claim 1 as the representative claim for this group. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellant contends that the cited references fail to disclose or suggest the limitations of “an integrity agent that enforces conditions of use by examining a second voucher describing the integrity of one or more functions that are to be accessed by a codec,” as recited in claim 1. More specifically, Appellant contends that the cited references, most notably Angelo, fail to teach an integrity agent that enforces conditions of use by examining a second voucher describing the integrity of one or more functions that are to be accessed by the codec. (Br. 10). We disagree for the reasons discussed *infra*.

### Claim Construction

“[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)).

In the present case, we begin our analysis by considering the scope of the claimed “integrity agent.” We note that instead of defining the integrity agent, the Specification merely describes the integrity agent’s function. For example, according to Appellant’s Specification, the integrity agent is used to determine the integrity and authenticity of received content, decrypt the content based upon received vouchers, and enforce conditions of use for the received content (FF 1). Thus, we broadly but reasonably construe the claimed “integrity agent” as software (and/or hardware) that is used to determine and enforce the integrity of the received content based on the content of the vouchers.

We consider next the scope of the claimed “voucher.” Appellant’s Specification states that “vouchers are documents that describe the exact contents of its respective component.” (Emphasis added). (Spec. p. 11, para. [0034]). However, the Specification also contains examples of vouchers that depart from the aforementioned meaning. For instance, the example of a codec voucher given in the Specification is a document that describes the integrity of the codec. (*Id.*). A description of the *contents* of the codec is clearly different than a description of the *integrity* of the codec. Moreover, according to the Specification, the module voucher describes the integrity of portions of the system module that are going to be called by the

codec. (*Id.*). Based on the aforementioned inconsistencies used throughout the Specification, we broadly but reasonably construe the claimed “voucher” as a description of a component.

As discussed above, Appellant contends that the cited references fail to teach an integrity agent that enforces conditions of use by examining a second voucher describing the integrity of one or more functions that are to be accessed by the codec (Br. 10). As noted by the Examiner, Boccon-Gibod is relied upon to teach codecs. (Ans. 3). We agree with the Examiner’s determination that Angelo teaches a hash table that contains a secure hash value for each program that a user wants to track in order to protect against the execution of unauthorized or modified code that violates the integrity of the program (*see* FF 3-4). In addition, we find that the hash values taught in Angelo describe the corresponding program. (FF 5-6). Thus, in accordance with our claim construction discussed *supra*, we find that Angelo teaches and/or suggests a voucher, as recited in claim 1. Moreover, we find that the hash values contained in Angelo’s hash table are examined to determine the integrity of the corresponding program (FF 4).

In light of the above discussion, we find that the combination of Boccon-Gibod and Angelo teaches and fairly suggests an integrity agent (i.e., hash table) which contains vouchers (i.e., hash values) for programs to be accessed by a user. Moreover, Boccon-Gibod teaches the use of codecs (codec units 370) incorporated in a system that prevents unauthorized access to multimedia content (Boccon-Gibod, ¶ [0025], Fig. 3).

Based on the record before us, we conclude that Appellant has not shown error in the Examiner’s *prima facie* case of obviousness. Accordingly, we sustain the Examiner’s rejection of representative claim 1

(and claims 2 and 4-24 which fall therewith) as being unpatentable over Boccon-Gibod and Angelo.

#### Dependent Claim 3

We consider next the Examiner's rejection of claim 3 as being unpatentable over Boccon-Gibod, in view of Angelo and Reid. Appellant essentially argues that Reid fails to cure the deficiencies of Boccon-Gibod and Angelo for the same reasons previously argued regarding the Examiner's rejection of claim 1. (Br. 12).

Since we found no deficiencies with the Examiner's rejection of claim 1, we similarly do not find that Appellant has identified any error in the Examiner's initial showing of obviousness, and we sustain the Examiner's rejection of claim 3 as being unpatentable over Boccon-Gibod in view of Angelo and Reid for the same reasons discussed above regarding claim 1.

#### CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has not shown the Examiner erred in rejecting claims 1-24 under 35 U.S.C. §103(a) for obviousness.<sup>2</sup>

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<sup>2</sup> We note that claims 10 and 11 are each directed to “[t]he computer system of claim 7.” “The computer system” of claim 10 lacks proper antecedent basis. Likewise, “the system module” of claim 11 lacks proper antecedent basis. Similarly, claims 23 and 24 are directed to “[t]he method of” claim 20 and claim 23, respectively. The “method” and “first module” recited in claim 23 lack proper antecedent basis.

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DECISION

The decision of the Examiner rejecting claims 1-24 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

pgc

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